IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

RSA.No.659 of 2004

DATE OF ORDER: 26.3.2007

Devinder Singh

...Petitioner(s)

Versus

State of Punjab and Others

....Respondent(s)

CORUM : HON'BLE MR. JUSTICE M.M. AGGARWAL

.*.*.*.

Present: Mr. Binderjit Singh, Advocate.

Mr. Satish Bhanot, Sr. DAG, Punjab.

M.M. AGGARWAL,J

Plaintiff-appellant had retired as DSP in the year 1973. Then in the year 2002, he had filed a suit for declaration challenging order dated 4.12.2001 of DGP refusing to revise his pension.

The contention of the plaintiff, now appellant had been that for calculating the pension, Rs.100/- as special pay, which he was drawing at the time of retirement was required to be considered in the pay of the plaintiff. That suit filed by the plaintiff was dismissed by Civil Judge (Jr.Division), Bathinda vide judgment dated 9.6.2003 and appeal against that judgment was dismissed by Additional District Judge, Bathinda on 18.11.2003. This is regular second appeal.

According to the plaintiff-appellant, the law point involved is:

> "Whether the special pay given to the appellant would be considered as part of last pay drawn so as to calculate the pension accordingly?"

Plaintiff-appellant had retired as DSP in the year 1973. At that time, Rs.100/- being paid as special pay was not counted in the pay for fixation of pension etc. It appears that after 1.1.1986, the State had started counting the special pay also towards the pay for calculating the pension.

Plaintiff filed suit demanding that Rs.100/- be calculated towards pay for the purpose of pension etc. The suit of the plaintiff had been dismissed by two courts below on the ground that when plaintiff had retired from service, then special pay was not being counted towards pension and he was not entitled to get this special pay counted even if pension had been revised after 1.1.1986.

On behalf of the plaintiff-appellant, it was argued that one Pishora Singh, who had retired in 1979 had been allowed the benefits and plaintiff, as such, would also be entitled to the benefit. Judgments of this Court reported in J.S. Yadav, V. The State of Haryana and Others, 2002(1) SLR, 244 and K.G. Walia and another v. State of Haryana and Others, 1989 (6) SLR, 171 had been relied on. It was argued that special pay forms part of pay and it should be included while calculating the basic pay for the purpose of pension.

However, I find that the cases relied relate to the State of Haryana and the petitioner in those cases had retired after 1.1.1986 but here is a case where present plaintiff-appellant had retired in 1973. Pensions had been fixed. At the time when plaintiff retired, he did not file any suit or claim that at that time his special pay was to be counted. Even if pension was to be revised from 1.1.1986 and special pay was to be counted, still plaintiff by filing the suit in the year 2002 cannot be allowed benefit. Instructions, if any, cannot be said to be applicable to the persons, who had retired in the year 1973.

There are concurrent findings of two courts below. I do not find any good ground to interfere. No law point is involved.

Dismissed.

March , 2007 (M.M. AGGARWAL)
manoj JUDGE